

No. 11656

United States
Circuit Court of Appeals
For the Ninth Circuit.

RENALDO FERRARI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

SUPPLEMENTAL
Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

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PAUL R. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11656

RENALDO FERRARI,

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STIPULATION TO AUGMENT RECORD

It Is Hereby Stipulated by and between Hallinan, MacInnis & Zamlock and Ralph B. Wertheimer, attorneys for appellant, and Frank J. Hennessy, United States District Attorney, attorney for appellee, that the record on appeal in the above entitled matter may be corrected by the addition thereto and inclusion therein of the reporter's transcript for April 22, 1947, in the matter of "United States of America vs. Frank Flier," number 30073-G, in the Southern Division of the United States District Court for the Northern District of California, said transcript being concerned with the proceedings at the time of sentencing said Frank Flier.

HALLINAN, MacINNIS &
ZAMLOCK,

/s/ RALPH B. WERTHEIMER,
Attorneys for Appellant.

/s/ FRANK J. HENNESSY,

/s/ W. E. LICKING,

Attorneys for Appellee.

It Is Hereby Ordered that pursuant to the above stipulation the record on appeal in the above entitled matter shall be augmented by the addition thereto and inclusion therein of the reporter's transcript of April 22, 1947, in the matter of "United States of America vs. Frank Flier," number 30073-G, in the Southern Division of the United States District Court for the Northern District of California.

/s/ FRANCIS A. GARRECHT,
Senior U. S. Circuit Judge.

[Endorsed]: Filed Dec. 12, 1947.

In the Southern Division of the United States
District Court in and for the Northern District
of California

No. 30,073-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK FLIER,

Defendant.

Before: Hon. Louis E. Goodman,
Judge.

REPORTER'S TRANSCRIPT

Appearances:

James T. Davis, Esq., Assistant United States Attorney, for Plaintiff.

Leslie Gillen, Esq., for Defendant. [1*]

*Page numbers appearing at top of page of Reporter's Certified Transcript of Record.

Tuesday, April 22, 1947, 4:25 o'Clock P.M.

The Clerk: This matter is on for trial, Mr. Gillen. As I understand, the defendant is going to change his plea?

Mr. Gillen: Yes, at this time, if your Honor please, the defendant requests the Court to withdraw his plea of not guilty to the five counts of the indictment and offers at this time to enter a plea of guilty to the fifth count of the indictment.

Mr. Davis: That is agreeable to the Government, your Honor.

The Court: You are satisfied to have the other counts dismissed?

Mr. Davis: Yes, your Honor.

The Court: The first four counts will be dismissed, then.

Mr. Davis: Yes, your Honor.

The Court: That will be the order. The plea is guilty to the fifth count?

The Defendant: Yes.

The Court: I had better hear some evidence about this matter.

WILLIAM H. GRADY

called as a witness on behalf of the Government; and having [2] been first duly sworn, testified as follows:

The Clerk: State your name to the Court.

A. William H. Grady.

(Testimony of William H. Grady.)

Direct Examination

By Mr. Davis:

Q. Mr. Grady, you are an agent of the Federal Bureau of Narcotics, are you not?

A. Yes, sir.

Q. You are familiar with the facts alleged in this indictment? A. Yes, sir.

Q. Will you state them to the Court?

A. The defendant was charged with the sale of one dram of heroin for \$50. The purchase price of \$50 was paid on August 20, 1945. On June 26, 1945, there was another purchase of two drams of heroin made from Frank Flier together for \$100.

The defendant was arrested in Salinas, California, in the possession of five drams of heroin on March 3, 1946. Mr. Flier is an addict. We have received information that he has been involved in the narcotic traffic for the past several years, first in the Vagabond Club and later in the Star Dust Bar. At the time he was in the Vagabond Club he was associated with Renaldo Ferrari, Stanley Paliwoda, Walter de Argorio and several other people who are known to our office as narcotic violators.

During the time of our investigation at the Star Dust [3] Bar Flier actually sold more narcotics than any of the other people there. However, from our observation it is believed that Bruno was the boss. Bruno was the man that had the final say, although his authority did not enter into each and every transaction. Flier was the man who took all the chances, and he would sell narcotics as many as

(Testimony of William H. Grady.)

five or six times in a single day in small quantities.

He is married. He lives in San Francisco with his wife. He does not have any children. As to his employment records, he had a filling station out at Steiner and Geary. He was more or less involved in black market operations in gasoline, sugar stamps and a few things of that type during the war. Then he sold the filling station or it changed hands, and then he entered the Star Dust Bar as a sort of head man. He was the manager when Bruno was not there. I do not believe that he worked there as a bartender. He may have, however, some of the time, but to my knowledge he was employed more or less as a greeter around the bar. He would stand around the bar and greet people as they came and went.

His criminal record indicates that he was arrested in 1928—according to the Federal Bureau of Investigation records he was arrested in 1928 for safe burglary. It does not show a disposition here on that.

Again in 1931 he was arrested in Los Angeles on one count of robbery. That was later changed to robbery in the [4] first degree, from which he was sentenced five years to life in San Quentin.

Then he was arrested in 1937 in Kansas City. That was violation of the Internal Revenue laws. There appears to be from the record two charges there, and on both of these charges he was sentenced to eighteen months on one, and one year and a day on the other, those running concurrently. That was

(Testimony of William H. Grady.)

1937. That is the last criminal record that he has. The Commanding General, Service of Supplies, Frank Flier, application for laborer in 1942.

The Court: I suppose applications made for work in government agencies come to the Bureau.

Q. Does it appear what sentence was served on that state charge?

A. Five years to life? That was 1931. He was arrested again in 1937 in Kansas City.

Q. You do not know exactly what his sentence was fixed at?

A. California has the indeterminate law.

Mr. Gillen: Three years and eight months, your Honor.

Q. (By Mr. Davis): Mr. Grady, may I ask you in view of your testimony in the Bruno and Billeci cases, when the Court was interested in the degree of culpability of these three defendants, and I believe you stated in both the Bruno and Billeci cases that in your opinion Bruno and Billeci were the ringleaders in the sense that they were the ones that [5] went down to Mexico and bought the narcotics and brought it here—is that correct?

A. Yes, sir, that is right.

Q. And Flier was more in the capacity of working for them, is that correct, in making the sales in the bar?

A. No, Flier handled the resale of it on this end, although Bruno was actually in charge of the over-all operation; Flier was the man that sold the narcotic—he was the man who actually sold the narcotic.

(Testimony of William H. Grady.)

The Court: Who was the retailer?

The Witness: He was the retailer.

Q. (By Mr. Davis): And was it Bruno and Billeci who imported it?

A. Yes, Bruno and Billeci.

The Court: Do you wish to ask any questions?

Mr. Gillen: Yes, your Honor.

Cross-Examination

By Mr. Gillen:

Q. Mr. Grady, did you make any inquiry as to the working record of Flier since his release in 1937 or 1938?

A. No, except that the time I have known him, when he worked in Vagabond Bar and the filling station out at Steiner and Geary—I have seen him out there quite often.

Q. It is true, is it not, that he was never arrested in connection with any black market gasoline stamps or sugar [6] stamps?

A. Well, I believe that is true. There isn't any indication of it on the record.

Q. Anything that you said about his activity in black market gasoline or sugar stamps was based purely upon some hearsay that you may have received?

A. Well, on some conversations that I overheard the defendant making.

Q. Some conversations of the defendant?

A. Yes.

(Testimony of William H. Grady.)

Q. But there is no record that his activities, if there were any activities, ever reached the point where he was ever arrested? A. No, sir.

Q. In fact, his last encounter with the criminal law prior to the arrest that you and Mr. Hayes made was the Internal Revenue violations in Kansas City in 1937, is that correct?

A. That is correct.

Q. And that pertained to the use or possession of some unlicensed alcohol, isn't that correct?

A. Well, there appears in this record to be two charges, Mr. Gillen. It is a violation of the Internal Revenue laws. It says, "Internal Revenue liquor laws." It was evidently a Federal offense.

Q. I understand that, but it pertained to liquor, did it not? [7] A. Yes.

Q. Not narcotics?

A. No, it was not a narcotic violation. It pertained to the liquor laws.

Q. It pertained to liquor that did not have the proper stamps or it did not go through the proper legal processes, is that correct?

A. Some Federal violation of the liquor laws.

Q. In your investigation of Frank Flier did it come to your attention that following his release from the 1937 conviction in Kansas City under the Internal Revenue laws that he had worked through the war in various defense plants? Did that come to your attention?

A. Let me see. I am just trying to recall the first time that I saw Mr. Flier. It seems to me in

(Testimony of William H. Grady.)

1944 that he was over—in 1943 or 1944 he was working in the Vagabond Bar with Ike, Red Ferrari and that group.

Q. In that bar he was a bartender, was he not, working on a salary? Isn't that true?

A. That is what I assume.

Q. Isn't it true at the Star Dust Bar he was also a bartender and manager in the absence of Bruno and worked as a bartender on a salary?

A. I saw Flier many, many times—understand, during the months of January and February of 1946, and during that time [8] I don't believe—I can't recall any incidents of where he wore a bartender's apron or any clothes to work.

Q. Don't you know of your own knowledge he worked as a bartender, that he had a social security card and was in the Bartenders' Union?

A. At the Star Dust?

Q. At both places?

A. I know he did at the Vagabond. I do not know at the Star Dust, but he could have.

Q. My question was, did your investigation reveal to you that he had been employed over a period of years throughout the war working with his hands in various defense plants, shipyards?

A. No, I did not make such an investigation.

Q. Did it come to your attention that he had worked at the shipyards at Wilmington, Delaware, and also in the shipyard at Kansas City, and in Fort Leonard Wood?

(Testimony of William H. Grady.)

A. No, sir, he could very well have, but I wouldn't have known it.

Q. That in his three defense plant jobs he worked a total of four years during the period of the war?

A. He was out here in 1943. How could he be back there working in a defense plant?

Q. I am asking if it came to your attention that he worked during the war for a period of four years in three different [9] defense plants.

A. No, sir.

Q. You did not uncover that in your investigation at all?

A. No, sir, I did not determine that.

Q. You say he is married, is that correct?

A. Yes, sir.

Q. And it came to your attention he has been legitimately married for eleven years to the same woman and has lived with the same woman, is that correct?

A. Yes, sir.

Q. At the service station on Steiner Street he worked as a regular service station attendant filling and servicing automobiles, is that correct?

A. Yes, he operated the station.

Q. He worked with his hands and got dirty and greasy and did the regular things that service station attendants do, is that correct?

A. Yes, I believe that is right.

Q. You stated, did you not, that as between Billeci, who was before this Court the other day, and Bruno, that Flier was the man who was the

(Testimony of William H. Grady.)

least culpable of the three from the standpoint of the Narcotics Division, is that correct?

A. The thing that I would say, Mr. Gillen, is Bruno and Billeci were the smugglers in this case and that Flier was the retail man on this end, that he sold the narcotics here [10] in San Francisco.

Q. I believe you stated that it came to your attention that Flier was an addict. A. Yes.

Q. Did it come to your attention in what manner Flier acquired the addition to narcotics?

A. No.

Q. Did it come to your attention that Flier was shot in the head in 1931 and hovered between life and death for some length of time, and subsequent to that time has complained of the old head injury and in that way became addicted to the use of narcotics for relief from pain?

A. My information is that Flier did not become an addict until he started running around with the crowd down at the Vagabond and the Star Dust Bar. Previous to that time, from everything I can understand, he associated with a different type of people.

Q. It never came to your attention that he developed an addiction in a minor way in the use of narcotics as a result of his old head injuries?

A. I just do not think there is a degree of addiction, Mr. Gillen. Either you are addicted or you are not.

Q. I am not asking you for your opinion as an expert, Mr. Grady; I am asking you what you en-

(Testimony of William H. Grady.)

countered in the way of information in the course of your investigation of this man? [11]

A. In the course of my investigation I would say the man was an addict, Mr. Gillen.

Q. But as to the manner in which he first commenced using narcotics, you have no information?

A. No, sir.

Q. You never heard it referred to as being in connection with migraine headaches which were the aftermath of the pistol wound in the head that doctors could do nothing for him about?

A. No, sir.

Q. You never heard that. Count five in the indictment refers to the incident of the arrest at Gilroy of Mr. Flier by yourself and Mr. Hayes, is that correct? A. That is at Salinas.

Q. At Salinas, rather. On that occasion he was carrying in his pocket one bindle of heroin, is that true? A. Yes, sir.

Q. The grainage or the amount that you described here to the Court was all contained in one bindle, is that so? A. That is right.

Q. And that is an amount that you not infrequently find on the person of a user for his own use, is that correct? A. Yes, that is right.

Mr. Gillen: I think that is all.

The Court: Is there anything that the Government wishes to add? [12]

Mr. Davis: No, your Honor. I think Mr. Grady has made a complete statement of our position.

(Testimony of William H. Grady.)

The Court: I have some recollection of hearing in the case of either Bruno or Billeci some statement made that there was equal culpability between Bruno and Billeci in the point of view of the Narcotics Bureau, but there was nothing said as to the relationship between this defendant and the other two, except what the agent said just now, describing their activities, Bruno being the general leader and Bruno and Billeci being the importers and gatherers of the narcotics, and this defendant acting as a sort of retail salesman, as it were.

Mr. Davis: That was the impression I received. May I ask Mr. Grady another question? It might clarify it. Will you take the stand, Mr. Grady?

Q. Could you tell us, Mr. Grady, from your experience up there in the Star Dust and in overhearing all these conversations and observing the narcotic transactions, do you have any opinion or any knowledge as to the profit motive in this? Was Flier sharing equally in the profit or was he working as a salesman for Bruno and Billeci, do you know?

A. The only thing that I can recall to mind right now is that the night before Flier was arrested they were dividing up the profits. There was Ferrari and Bruno and Billeci—or Flier, Bruno and Ferrari—and they divided the money [13] equally on that occasion, although that was not a very large deal. That was only \$2,100. And these fellows do make a lot of side deals. Somebody would come to town with narcotics to sell them cheap, and

(Testimony of William H. Grady.)

these fellows would buy them up. I do not know whether that is the regular deal they made all the time. But on that occasion they all divided equally, and from my observation up there I never had occasion, outside of that one, to see how they did divide the money, but on that occasion they did divide it equally.

Q. (By Mr. Davis): We have shown, so far as you know, Bruno and Billeci smuggled it out or brought it into San Francisco, is that correct?

A. Yes, sir.

Q. And then you said this man acted as a salesman; he would be evidently working in conjunction with Bruno and Billeci, is that correct?

A. Billeci would seem to leave the picture until he came into San Francisco. Bruno and Flier would then take over. They would take over—there was much work connected with the selling and smuggling of narcotics. When they got it into San Francisco, the first thing they had to do was hide it in some place. So it would be in a secret place. They used the Lake Merced area out there, hiding it underground in glass bottles. They would also have to adulterate it. And we have even heard Bruno and Flier discussing the [14] adulteration or the hiding of the narcotics, that they would have to take the narcotics out and hide them, or they would adulterate them in such and such a proportion.

Q. I take it you understand what we are trying to get at: whether these men are equally guilty or whether Bruno and Billeci were higher-ups and

(Testimony of William H. Grady.)

this man was working with them, and from your testimony, I take it that you have described to the best of your ability what you saw and heard, but you yourself have formed no definite opinion, is that correct?

A. Yes, that is correct. I have given the facts as I have seen them, as best I could.

Q. (By Mr. Gillen): When you mentioned the one isolated instance of seeing or overhearing the division of some money, whom did you say was present?

A. Red Ferrari, Flier and Bruno.

Q. Was it definitely established in your mind from anything that you heard said there that this was pertaining to a narcotic transaction?

A. Yes, sir. There was a discussion as to the quantity of narcotics. The entire discussion was about narcotics, and the money was divided in such a way it was obvious that it was a narcotic transaction.

Q. When you say it was obvious, was that a conclusion of yours, or was it actually said?

A. He did not say, "This is your share of the money for the [15] heroin I sold yesterday," he did not say it that way as he handed the money out, but he said, "This is what we have and we are going to divide it equally." He said, "We sold two ounces to Chino—" I can't recall the exact conversation, but it was a conversation that I knew was about the selling of narcotic drugs.

Q. Ferrari was the third person?

A. Ferrari was the third person.

(Testimony of William H. Grady.)

Q. You are positive that there was no other transaction mentioned other than narcotics from which these funds may have been derived?

A. No, sir, there wasn't any other subject mentioned.

Mr. Davis: Perhaps this would be helpful——

Mr. Gillen: I beg your pardon.

Q. Isn't it true that on this occasion there was a discussion without the transfer of any money?

A. No, I actually saw the money.

Q. You actually saw the money transferred?

A. I actually saw the money.

Q. Was it currency that was transferred?

A. Yes, sir.

Q. Were they large bills or small denomination bills?

A. I couldn't say as to the exact denomination of the bills. Flier divided them into three different parts.

Q. Flier divided it among the three of them?

A. Yes, Flier had the money, but, as I say, that might have been—that might not have been one of their regular transactions. I wouldn't want to leave the impression with the Court that they divided everything that way. I do know that they did on that occasion, but that may have been a side deal where somebody had brought in narcotics, they bought it at a good price, sold it and were splitting the profit between the three of them.

Q. You know, do you not, Mr. Grady, from your investigation, Flier was not declared in on any

(Testimony of William H. Grady.)

equal basis with Bruno and Billeci, and the reason that Flier encountered so much narcotics was that he was the man who worked in the place and the others worked on the outside?

A. The only way I could go about that is the normal relationship between a peddler and distributor.

Q. May I interrupt you? I am asking you if it is not a fact that you know from your investigation, from having listened in, the reason Flier was exposed to so many encounters with people seeking narcotics was that he working in the place, and you know of your own knowledge that Flier was not getting an equal share, that Flier was more of a stooge and handled transactions that he encountered when he was working in the Star Dust Bar when the others were not around?

A. No, I could not honestly say that, because Flier dealt many times when I knew Bruno had been in and out of the place. [17] I do not believe that would be the exact truth of the case.

Q. You did mention in the Bruno case to his Honor when you were asked for an opinion that you considered Flier the least culpable of the three because the other two seemed to be the wholesalers and procurers and Flier merely handled the retail transactions in San Francisco and had no part in the smuggling?

A. My recollection is I told the Court that I believed that Bruno was the boss, and I still maintain that is what I believe: he was the head man.

Mr. Gillen: I think that is all.

Mr. Davis: That is all.

Mr. Gillen: Unless your Honor would care to hear from the defendant——

The Court: I will take whatever statement you want to make.

Mr. Gillen: May I say this: this defendant's first encounter with the law in Los Angeles was when he was a very young man in connection with a robbery case, in which he was shot and nearly killed. Subsequent to that time his working record has been a really good working record. I mean the man has not been afraid to work. The man has worked. His encounter in 1937 was in connection with the use and sale of some unauthorized liquor, that is, liquor that had not gone through the legal processes required by the Federal Government. In other words, it was a type of bootlegging. [18]

The Court: This shooting took place in connection with the robbery for which he served time in Los Angeles?

Mr. Gillen: Yes, your Honor. He was shot by the police. Some young boys were shot by the police in connection with a robbery. This man was shot through the skull, his brain injured, and as an aftermath of that he has suffered through the years at times what doctors call, for want of greater knowledge on the subject, migraine headaches, for which he can receive no relief. As a result of that, during the times he has suffered he did resort to narcotics for relief.

Eleven years ago he married a legitimate girl. I mean, this man is not tied up with any prostitute. He married a fine young woman. She was a working girl herself, a girl of Italian descent. This man is of Jewish descent. They have lived together for the past eleven years. Throughout the war he worked with his hands, I mean, worked at manual labor in three different defense plants, and his record may be found in that respect. From time to time he has worked as a bartender. He is a member of the Bartenders' Union. He had this filling station at Steiner Street, and regardless of the gossip about black market stamps, and I imagine during the war practically every legitimate filling station man did some minor black marketing among his customers, friends and people who were jammed and needed extra gasoline——

The Court: I am not concerned with this gas station [19] business.

Mr. Gillen: Those matters were brought to your Honor's attention. There was a statement made to your Honor—I did not hear it, but it was brought to me second hand—a statement made in court that there was less culpability indicated on this man's part, although he was not selling groceries or a legitimate commodity, than the other men involved here.

The Court: I tried to get that clear. Apparently the Agent explained today all he knows factually about the matter.

Mr. Gillen: There was not an equal share of the profits, may it please your Honor. As a matter of

fact, this man is practically an insane man for what he did for friends and what he got out of it. As a matter of fact, he got no profits out of it. He is a handy andy and a happy hooligan who does too many favors for his friends. He is a very stupid man for having involved himself for practically no remuneration to himself. As your Honor knows and Mr. Davis knows, we were the first ones to indicate a willingness to save the Court time and trouble and enter a plea, and we would ask your Honor to consider that in passing judgment on this man.

The Court: Well, Mr. Gillen, I, of course, take that into account. I cannot ignore the testimony of the Agent as to the extent of the defendant's activities as to whether he is a retailer or not. The Agent has testified to the fact that he was constantly selling narcotics along with these others. [20] He has a prior criminal record, of course. He is also an addict, as you have stated. I sentenced the defendant Bruno, who went to trial before a jury and was found guilty on two counts, to a total of fifteen years in prison. The defendant Billeci pleaded to one count, and I think three other counts were dismissed.

Mr. Davis: Yes, your Honor.

The Court: And I sentenced the defendant Billeci to ten years. The indictment as to this defendant contains five counts. He has pleaded guilty to the fifth. He is an addict, but I think the defendant Bruno is an addict too. Mr. Duane called my attention to that at the time of entering a judgment, and subsequently in the written order it may

be I included a recommendation to the Attorney General that he be either sent to a narcotic institution or be given such treatment as is available in connection with his addiction. I do not feel that I can make any different distinction in this case. It seems to me the situation is not greatly different.

Mr. Gillen: May I make one observation to your Honor in that connection, however? I think that the working record of this man as against the other man involved is different.

The Court: Granted that is so, I have to base my judgment—it may be harsh—upon the theory, as I have said before, that these men are just too dangerous to the community [21] and the rest of the people. I take no pleasure in having to impose what may appear to be somewhat severe sentences, but the urge on behalf of the whole community is too strong to be ignored. It may fall somewhat harshly in this case upon the wife of the defendant, but he is just too dangerous a man not to be dealt with in what may appear to be a somewhat harsh manner. It is too dangerous for all of these young people and all those who come in contact with these men who deal in narcotics for profit, and my conscience would not permit me under those circumstances to deal any differently with this case.

The judgment will be that the defendant serve a term of ten years in the Federal penitentiary and pay a fine of \$1,000.

Mr. Gillen: Will your Honor make a similar recommendation as you did?

The Court: I will attach to the judgment in this case a similar recommendation to that made in the case of the defendant Bruno.

Mr. Gillen: That he either be confined to a narcotic institution or given whatever treatment is necessary.

Mr. Davis: If the Court please, in view of the plea in this case, I would recommend that Case 30074, United States vs. Bruno and Flier, be dismissed.

The Court: Very well, I will make that order.

Certificate of Reporter

I, J. J. Sweeney, Official Reporter, certify that the foregoing 22 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

/s/ J. J. SWEENEY.

[Endorsed]: No. 11656. United States Circuit Court of Appeals for the Ninth Circuit. Renaldo Ferrari, Appellant, vs. United States of America, Appellee. Second Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed January 6, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.